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Information presented by the Kenyan National Commission for Human Rights*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Kenyan National Commission for Human Rights,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

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Annex

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Rights of persons with disabilities to education in Kenya

I. Introduction

1.1 Kenya National Commission on Human Rights

1. The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution with 'A status' accreditation. The Commission was originally a statutory body established under the KNCHR Act of 2003. With the promulgation of the 2010 Constitution, the Commission was re-established under Article 59 (4) of the 2010 Constitution and for that reason, enjoys Constitutional protection as a Constitutional Commission.

2. Pursuant to the KNCHR Act (No.14 of 2011), the Commission is mandated to promote the protection and observance of human rights in public and private institutions. In line with the new constitutional dispensation and in keeping with the expansive Bill of Rights which entrenches economic and social rights and explicitly recognizes that every person has the right to education[1] and further recognizes that a person with any disability is entitled to access educational institutions and facilities[2], KNCHR recognizes the realization of economic and social rights as one of its strategic priorities for the period 2013/18.

3. As the National Human Rights Body, KNCHR was appointed by the Attorney General as the independent monitoring body on implementation of the UN Convention on Rights of Persons with Disabilities in line with Article 33 (2) of CRPD[3]. KNCHR undertakes this role through:

- Conducting monitoring visits in various counties to assess the status of rights of PWDs
- Providing advisories to the Government on legislation and policies to ensure rights of PWDs are infused
- Conducting research on issues affecting PWDs, providing appropriate recommendations and disseminating the same to relevant stakeholders
- Networking with Disabled Persons Organizations in promotion and protection of rights of PWDs
- Creating awareness on rights of PWDs
- Receiving and investigating complaints lodged on violations of rights of PWDs

1.2 Statistics on persons with disabilities in Kenya

4. Against a population of over 37 million, there are 7 million PWDs as per the Kenya National Survey for Persons With Disabilities of 2008[4]. The PWDs are disproportionately

[1] The Constitution of Kenya at Article 43(1) (f)

[2] The constitution of Kenya at Article 54(1) (b)

[3] Kenya signed the CRPD IN March 2007, and subsequently ratified it in May 2008

[4] See, Kenya National Survey for Persons With Disabilities, 2008 (National Coordinating Agency for Population and Development *and* Kenya National Bureau of Statistics) available at http://www.afri can.org/CBR%20Information/KNSPWD%20Prelim%20Report%20-%20Revised.pdf . This was the first survey of its kind to be conducted in Kenya. The survey aimed at estimating the number of PWDs, their distribution in the country, and their demographic, socio-economic and socio-cultural characteristics. The survey also sought to determine the types and causes of the disabilities; the problems faced and coping mechanisms, and the nature of services and rehabilitation programmes

represented among the poor and tend to be poorer than their counter parts without disabilities. Results of the survey place the prevalence of disability in Kenya at 4.6%. This is the proportion of the population with the following impairments: physical, mental, visual, speech, self-care and hearing. According to the survey data, the most prevalent type of disability is physical disability, followed by visual impairment. Regionally, the highest disability rates were recorded in Nyanza (6.8%) followed by Coast (5.2%) and Central (5.2%) provinces. The lowest disability rates were found in North Eastern Province (2.6%) followed by Rift Valley (3.2%)

5. About 67% of PWDs had a primary education and 19% attained secondary, a small proportion of PWDs had attained middle level of education, but only 2% had reached university level. Of the PWDs who had attained primary education, big proportions were rural residents (72%), compared with 48.6% in urban areas. In contrast, more PWDs in urban areas had attained higher education. Males are slightly more advantaged than females[5].

6. The results indicate that about 7% reported having been denied enrolment at any level of education. In particular, about 3% had been denied entry to regular pre and primary schools because of their condition such schools. PWDs aged below 25 years had a high proportion of those who were denied entry into regular preschool and primary school compared with those who were older.

7. 39% of the PWDs who left or dropped out of school said they did not have enough money to continue, while 26% had already completed the highest grades at different levels. In urban areas 43% of PWDs had left school because they completed, compared with only 21% of their rural counterparts. Illness and lack of interest (18%) were cited as other reasons for dropping out of school. About 6% had dropped out of school because of their disabilities.

II. Legal and Policy Framework that guides access to Education by Learner with disabilities

8. The Legal and Policy framework that guides Access to Education by learners with disabilities in Kenya include the Constitution of Kenya, Disabilities Act(2003), Basic education Act, Children's Act and the Sexual offences Act, which are currently under review to align them to the Constitution. Other policies include National Strategy for development ,Vision 2010,National Children Policy (2007), National Policy on Special Needs Education of 2007, national policy on special needs education of 2007, The National Policy on Ageing and older persons of 2007,The National Policy on PWDs of 2006.

9. The PWDs Act, 2003 specifies that all learning institutions must take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations. The Act also specifies that no person or learning institution shall deny admission to a person with disability because of their disability.

10. Internationally, Kenya is signatory to various human rights instruments which further obligates it to take specific measures to enhance the realization of human rights, the obligations are further amplified by dint of Article 2(5) and 2(6) of the constitution which provides that the general rules of international law shall form part of the law of Kenya and

[5] See, Kenya National Survey for Persons With Disabilities, 2008 , pp 16

that any treaty or convention ratified by Kenya shall form part of the law of Kenya. With this regard, the State has internationally committed itself to protect the rights of person with Convention on the Rights of Persons with Disabilities (CRPD)[6].

III. Access to Education by Learners with Disabilities

11. Governments are obliged to make education available, accessible, acceptable and adaptable[7] for all children. As a state party to the ICESCR and CRC, Kenya is obliged:

"*To take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*"[8]

12. Kenya's obligations respecting the right to education for children with disabilities are exercisable at three levels:

- The obligation to respect the right to education which would, for example, require Kenya to refrain from adopting any measures that would hinder or prevent persons with disabilities from accessing education;
- The obligation to protect which would, for example, require Kenya to ensure that no other actor interferes with the access of education by persons with disabilities; and
- The obligation to fulfil which would, for example, require Kenya to fulfil or provide for the realisation of the right to education for persons with disabilities.

13. In ensuring access to education to all, Kenya launched the free primary education programme in 2002. Despite this programme, 11 years later, persons with disabilities have not been able to access education at equal levels with the able-bodied learners. KNCHR embarked on monitoring the rights of persons with disabilities in various counties countrywide so as to adequately evaluate the status of the rights of Persons With Disabilities (PWDs). Three levels were used to gauge whether the State was respecting its human rights obligations towards PWDs: first, the International Convention on the rights of PWDs; second, the Constitution of Kenya; and finally the Persons With Disabilities Act of 2003. The aim of the exercise was to evaluate whether persons with disabilities were able to enjoy their rights on an equal basis and without discrimination. Among the rights monitored and central to the advancement of PWDs is the right to education. The exercise combined with KNCHR's thematic researches[9] and engagement with stakeholders noted a number of challenges that continues to hinder access to education by learners with disabilities.

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[6] Article 28 of the CRPD

[7] Former United Nations Special Rapporteur on the right to education Katarina Tomasevski stated that the core contents of the right to education entails ;Availability, Access and Non Discrimination, Acceptability and Adaptability see

[8] Committee on Economic, Social and Cultural Rights (1990): *General Comment No. 3 on the Nature of State Parties Obligations*, 5 Session, 1990.

[9] KNCHR conducted a research on access to education by persons with disabilities in Kenya in 2008

3.1 Challenges experienced by Learners with Disabilities

3.1.1 Segregated, integrated and Inclusive education

14. Special Needs Education (SNE) in Kenya is undertaken within segregated, integrated or inclusive education settings. Most of children with disabilities who attend school learn in schools catering for specific categories of disabilities. Schools exclusively for children with visual impairments, hearing impairments, intellectual disabilities and physical disabilities have continued to exist despite pressures from integrated and inclusive education models which are increasingly becoming the norm.

15. Significantly, only a small percentage of children with disabilities attend school at all in view of scarce resources and limited facilities. With regard to inclusive education, nothing much has been achieved besides various policies[10] that note government will be keen on implementation of inclusive education for persons with disabilities.

16. *Sessional Paper No. 1 of 2005*[11] emphasizes inclusive education as one of the key strategies for facilitating access to education for children with disabilities. Similarly, a Task Force on Special Needs Education set up in 2003 recommended inclusive education as a key strategy for expanding access to education for children with disabilities.

17. Inclusive education clearly has benefits especially regarding the social integration of children with disabilities, their development and in removing stigmas associated with disability. However, the government has not done enough to facilitate inclusive education; and the effect has left inclusive education as an impracticable and ill-understood theory[12]

18. One commonly held implication was that inclusive education simply entailed removing children with disabilities from special schools to ordinary schools; when, in fact, inclusive education concerns itself with teaching the disabled child in the environment best suited for learning in view of such child's disability

3.1.2 Curriculum

19. A curriculum is the key document outlining the content of education. Schools catering for children with intellectual disabilities use three kinds of curricula, which contribute to their education. These are:

- Academically oriented curriculum (ordinary school curriculum);
- Social curriculum (focusing on skills of daily living); and
- Vocational training curriculum.

20. At the moment however, there is no uniform curricula applied for teaching children with intellectual disabilities. Since schools do not have curricula specifically designed for learners with intellectual disabilities, the schools use adapted curricula – entailing the use of the regular school curriculum as adapted to suit the circumstances and needs of the learner.

21. Examinations such as Kenya Certificate of Primary Education are particularly daunting and harrowing for pupils with disabilities who would be examined without due regard for reasonable accommodation measures in view of their disabilities.

22. The curricula for social skills education and vocational training are understated and undervalued by the Government hence nationally recognised certificates were not issued to

[10] the national Special needs Education Policy framework of 2009 and the Disability Act of 2003
[11] the *Sessional Paper No. 1 (2005)* on A Policy Framework for Education Training and Research
[12] Objects of pity or Individuals with rights, 2007 Occasional Report by KNCHR

pupils upon qualification. National certificates, would give value (of credibility and legitimacy) to the education or training in question.

23. For learners with autism, psychosocial and intellectual disability; access to education is far from realization. In addition to inadequate learning institutions that can adequately accommodate them, the curriculum that is used in schools has been to their disadvantage as it has not considered the needs of these groups. The main grading system in Kenya is through national examination which may not necessary favour learners with intellectual disability.

24. There is therefore need to Review and adapt where necessary the curriculum, textbooks, examinations and assessment procedures to ensure access and inclusion of all children.

3.1.3 Teaching staff

25. Teaching children with disabilities goes beyond regular school teaching responsibilities to include social work and childcare. SNE teachers bear responsibilities over and above their traditional roles as teachers, including vocational training, post-school follow up and they have to be on call 24 hours should their pupils need help. The only extra allowances teachers in special schools are paid amounted to 10% of the minimum basic salary of the teacher's grade.

26. Teachers especially those in regular schools have no additional training in special needs education. This makes them ill-equipped to provide adequate and quality services to learners with special needs; there is also deficiency in the teacher-student ratio in classes for children with disabilities.

27. Despite the set ratios, the practice on the ground is totally different. In many special schools for children with intellectual disabilities, the student-teacher ratio is 1 teacher for more than 15 students and in some schools; the ratio was as high as 1 teacher for more than 20 students.

3.1.4 Vocational training and employment for persons with disabilities

28. The vocational training is of great relevance to the livelihoods of children with disabilities. Here, we illustrate this point with the situation which children with mental/intellectual disabilities face. Primary School is the highest academic level in these schools after which some children get integrated in regular schools while those who cannot be integrated proceed to pre-vocational and to vocational classes. It is in the vocational class that these learners are taught skills through which they can earn a living - including weaving, tailoring, carpentry and knitting.

29. Therefore, these schools have responsibilities over and above the traditional role of teaching. Teachers have to consciously make assessments of each child's abilities for purposes of eventual onward placement either in academic or vocational classes. Virtually all rehabilitation centres face difficulties raising resources for their upkeep. The Government seemed to make a disadvantageous differentiation in resource allocation against rehabilitation as distinct from traditional education institutions for children with disabilities.

3.1.5 Government funding

30. The first challenge is with regard to adequate learning facilities for PWDs. Kenya lacks adequate learning facilities and learners with disabilities have to wait longer before getting admission due to congestion. In total, there are 3464 special needs institutions with 2713 being integrated institutions and 751 special schools. Out of these only 10 are public

secondary schools for learners with hearing impairment; 3 for learners with physical disabilities and 4 for learners with visual impairment making a total of 17 secondary schools for learners with disabilities in the country. This has adversely affected learners with disabilities accessing higher education[13].

3.1.6 Education Assessment Centres

31. Since the 1980s, the Government has established Educational Assessment and Resource Centres (EARCs) at the district level (with some physical facilities shared by two or more districts). EARCs perform services - including early identification of disability for appropriate intervention, as well as assessment of children with disabilities for referral and placement in appropriate educational programmes. EARCs are, therefore, crucial in ensuring appropriate educational intervention for children with disabilities.

32. The government has for the past 4 years not been funding EARCs which has adversely affected the functioning of the centres. The centres lack proper equipment and adequate personnel with most of the time centres having an individual with one area of specialization risking misidentification.

33. The government should establish and equip more EARCs in every district. Similarly, adequate, trained and multi-disciplinary teams should be provided in all EARCs.

3.1.7 Quality assurance in the provision of special needs education

34. The Ministry of Education requirement is for schools for children with disabilities, and schools generally, to be regularly inspected by the Quality Assurance and Standards Division to ensure the quality of education. However, the study learnt that special schools were not inspected regularly, and that where this was done, the quality assurance officers lacked expertise and did not understand what it is that they were inspecting.

35. Quality Assurance and Standards Officers (QASOs) generally did not understand what special needs education entailed. The EARC in Kisumu[14] reported a case where one officer queried why learners with intellectual disabilities were being taught how to drink water – remarking that this was a waste of time and that the pupils should be 'taught' useful subjects. The officer did not understand that education for a child with an intellectual disability entails much more beyond the academic and that learning how to drink water is an activity of daily living that has to be taught. In Tumutumu School for the Deaf[15], a scenario was described where quality assurance officers avoided inspecting the school, joking, anyway, that the teachers in the school knew what was best and that the officers had so much more work which they understood better. Many inspectors were also not familiar with the conditions of children with disabilities, and in one example, at Ebutsiratsi Special School[16], an officer fled from the class he was inspecting and opted to complete his report in the staff room after witnessing an epileptic child having a fit. When it comes to integration of children with intellectual disabilities to regular schools, this study found that inspectors are not well versed with the concept. At the Kaimosi Special School[17], for instance, the study was informed of a case where an inspector was demanding the

[13] According to the Kenya National Survey for Persons with Disabilities published in May 2008 by the National Coordinating Agency for Population and Development; 67% of persons with disabilities had primary education and 19 % attained secondary education. But only 2% had reached university level

[14] KNCHR monitored various academic institutions and EARCs all over the Country to ascertain the status of rights of Persons with Disabilities when accessing education

[15] Ibid

[16] Ibid

[17] Ibid

integration of a 20 year old student with intellectual disabilities into class 8 of a regular school, yet an assessment done found that the student could only fit in class 5 of a regular school.

36. The situations described here suggested to the study that monitoring the quality of education for children with disabilities is not a high priority in the Ministry of Education. Under these circumstances, issues of monitoring implementation of curricula and even use of facilities and equipment cannot be assured in institutions educating children with disabilities. A pertinent point in this regard is the need for the Quality Assurance and Standards Division to monitor curriculum implementation and the proper utilization of funds under Free Primary Education. It is also necessary that it should ensure that teachers trained by KISE use their learning for the benefit of learners with special needs.

3.1.8 Stigmatization and stereotyping

37. This continues to prevail in some communities and most parents prefer educating the able-bodied over learners with disabilities. Most learners with disabilities therefore end up being illiterate which negatively impacts on their chances of getting employment.

IV. Conclusion

38. Access to education for PWDs is central to the development of any society and it is impossible to divorce the rights of persons with disabilities from the broad developmental agenda. Granted, the Kenyan State has put in place legislation that guarantees their rights but as it has often been the case most people only pay lip service to these laws.

39. Sensitization of communities on the importance and rights of PWDs is an urgent step towards a human rights society; particularly to eliminate prejudice, stereotypes and foster respect for the rights and dignity of PWDs. The State and all other stakeholders should collaborate in dealing with the overarching challenge of resources to fund education.